THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 212 OF 2018

WANGALA PHILIP :: PLAINTIFF

VERSUS

STEEL AND TUBE INDUSTRIES LIMITED :::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE BONIFACE WAMALA

JUDGMENT

Introduction

[1] The Plaintiff brought this suit against the Defendant seeking general damages, exemplary or punitive damages, interest and costs of the suit arising out of an accident that led to loss of his right hand that was crushed by the Defendant's leveling machine while in the course of employment with the Defendant and allegedly owing to the negligence of the Defendant by failing to implement safety measures.

[2] The brief facts according to the Plaintiff are that the Plaintiff was employed with the Defendant as a machine helper until the 14th day of October 2013 when his right hand was crushed by the Defendant's leveling machine in the factory premises while on duty whereby he lost three index fingers and a forearm leading to permanent incapacity. The Plaintiff was consequently terminated by the Defendant on medical grounds on 4th May 2016, given statutory compensation from the insurers after deducting medical expenses but the same did not cover general damages as a result of the defendant's negligence. The Plaintiff averred that the Defendant was solely responsible for the injury sustained by him as a result of the Defendant's negligent conduct and failure to implement safety measures to protect the Plaintiff from injury,

for which the Plaintiff is entitled to compensation by way of damages. The Plaintiff also relied on the principle of res ipsa loquitor.

[3] The Defendant filed a written statement of defence (WSD) denying the Plaintiff's claims and stated that the Plaintiff was duly inducted and instructed on how to fulfill his role as a machine helper. The Defendant stated that it has at all material times provided a safe working environment for all persons in its employment, obtained insurance cover for the Plaintiff and reasonably provided the necessary safety gear. It was further averred that the levelling machine at which the Plaintiff was stationed was and still is in a proper working condition and no other employee has ever sustained any injury in the course of work. The Defendant concluded that they had taken reasonable precautions expected of them as an employer and they are not liable in general damages or any other form of compensation. The Defendant prayed for dismissal of the suit with costs.

Representation and Hearing

[4] At the hearing, the Plaintiff was represented by **Mr. Hussein Hilal** of M/s Hilal & Co. Advocates while the Defendant was represented by **Mr. Cyrus Baguma** of M/s Kalenge, Bwanika, Ssawa & Co. Advocates. Counsel made and filed a joint scheduling memorandum. Evidence was adduced by way of witness statements and each party led evidence of one witnesses. Counsel then made and filed written submissions which have been considered by the Court in the determination of the matter before Court.

Issues for Determination by the Court

[5] Two issues were agreed upon for determination by the Court, namely;

(a) Whether the Defendant was negligent in its obligations to the Plaintiff as an employee?

(b) What remedies are available to the parties?

Burden and Standard of Proof

[6] In civil proceedings, the burden of proof lies upon he who alleges. *Section 101 of the Evidence Act, Cap 6* provides that;

"(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

[7] Further, *section 103 of the Evidence Act* provides that the *"burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person".* Accordingly, the burden of proof in civil proceedings normally lies upon the Plaintiff or claimant. The standard of proof is on a balance of probabilities. The law, however, goes further to classify between a legal burden and an evidential burden. When a plaintiff has led evidence establishing his/her claim, he/she is said to have executed the legal burden. The evidential burden thus shifts to the defendant to rebut the plaintiff's claims.

Resolution of the Issues

Issue 1: Whether the Defendant was negligent in its obligations to the Plaintiff as an employee?

Submissions by Counsel for the Plaintiff

[8] Counsel for the Plaintiff submitted that the Defendant was negligent and its actions res ipsa loquitor caused the accident as the injury to the Plaintiff could not have happened save for the negligence of the Defendant. Counsel cited the case of *Donoghue v Stevenson [1932] AC 562* for the ingredients of negligence

and Section 13(1)(a) and (2)(a) of Occupational Health and Safety Act 2006 to the effect that an employer has a duty to provide and maintain systems of work that give, as far as is reasonably practicable, a safe working environment. Counsel referred the Court to the LD Form 31 (PE3), signed by the Defendant, which described the cause of the accident to the effect that the Plaintiff was putting expanded mesh in the roller and a sharp end got stuck in his glove and the hand entered into the rollers which crushed his right hand. Counsel stated that according to the Plaintiff's evidence, the machine in issue had no protective guard or rollers and the Plaintiff was feeding the wire mesh directly into the levelling machine. Counsel also pointed out that according to the evidence of DW1, the machine that was shown in the video played before the Court was delivered and installed in 2014 yet the accident happened in 2013. Counsel stated that even then, the video was not a record of events of 14th October 2013.

[9] Counsel also submitted that the injury sustained by the Plaintiff was res ipsa loquitor caused by the conduct of the Defendant. Counsel cited the case of *Okot Ayere v Attorney General HCCS No. 381 of 2005* to the effect that for the doctrine of res ipsa loquitor to apply, there must be reasonable evidence of negligence but where the thing is shown to be under the management of the defendant or his servant and the accident is such that in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. Counsel submitted that the defendant company had sole and absolute control over the leveling machine and did not ensure that the machine in issue is safe so that the Plaintiff does not operate it without risk to his limbs. Counsel further argued that the Defendant did not adduce before court any proof of health and safety policy, induction/ training manual or even a personal protective policy of the

defendant company. Counsel prayed that the Court finds that the accident in issue arose due to the defendant's negligence.

Submissions by Counsel for the Defendant

[10] In reply, Counsel for the Defendant submitted that the Defendant discharged its duty to the Plaintiff by providing the necessary personal protective equipment, providing a safe working environment and obtaining insurance cover. Counsel cited the case of *Isaac Mawanda & 4 Others v Tugumisisrize Able & Another HCCS No. 104 of 2017* to the effect that the burden of proof in an action for negligence is on the person who complains of negligence. Counsel submitted that the Plaintiff admitted that the Defendant provided him with gloves and did not lead any evidence to prove the allegations that the machine in issue had no protective guard or rollers. Counsel further submitted that according to the Defendant's witness, the impugned levelling machine is installed with a strong metallic guard at the front and that the plaintiff could not rely on res ipsa loquitor to absolve himself of the requirement to prove that the levelling machine he worked on was defective. Counsel prayed to the Court to find that the Plaintiff failed to prove that the Defendant breached its duty of care towards the Plaintiff as its employee.

Determination by the Court

[11] The Plaintiff brought this suit in negligence. Negligence as a tort has been defined as the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. See: *Blyth v Birmingham water works (1856) II EX 78.* To establish the tort of negligence, the plaintiff must establish that there was a legal duty of care owed to him or her; that the duty of care was breached by the named defendant; and that damage or injury was suffered by the plaintiff. See: *Donoghue v Stevenson (1932) UKHL 100.*

[12] On the case before me, it is not disputed that the Plaintiff was injured on 14th October 2013 while working at the premises of the Defendant. The cause of the accident, according to the Plaintiff, is that while doing his work of feeding the levelling machine with the expanded mesh, a sharp end of the mesh got stuck in his glove, pulled his hand, the hand entered into the rollers and got crushed, cutting off his three fingers and part of the forearm. This evidence is corroborated by the entry in the LD Form 31 which was admitted in evidence as PE3. In evidence, the Defendant's witness, Mr. Gurinder Singh (DW1) introduced a theory that the accident could have been caused by the actions of the Plaintiff in removing the guard while trying to repair the machine. However, this theory was not supported by any facts either in the Defendant's pleadings or in evidence. DW1 himself stated that he was not on duty at the time of the accident and his evidence thus becomes hearsay. As a matter of fact, the Defendant made no plea of contributory negligence in their WSD. The Defendant is thus not expected to introduce the plea at the time of adducing evidence.

[13] On the evidence before the Court, it was admitted by the Defendant that they owed a duty of care to the Plaintiff. They only denied breach of the said duty stating that they performed their obligations in ensuring a safe working environment for the Plaintiff and other workers. According to the Plaintiff, the Defendant breached their duty of care by having in place a defective levelling machine, without rollers and without a guard. It was explained by the Plaintiff that rollers would have removed the need for the Plaintiff to feed into the machine with the expanded mesh as he would simply place it on the rollers that would drive the mesh into the machine. In absence of the rollers, the Plaintiff had to push the mesh into the levelling machine. It was further explained by the Plaintiff that if the machine had the requisite guard, it would not have been possible for his hand to get into the machine the way it did

before getting crushed. According to the Plaintiff, even where the hand was pulled by a sharp end of the mesh, the hand would not have been injured the way it was.

[14] The absence of rollers and a guard on the machine was disputed by the Defendant's witness. Through DW1, the defence produced in court a video of the levelling machine which was alleged to have been the one the Plaintiff was working on, at the time of the accident. The Plaintiff, however, disputed the fact that the machine displayed in the video was the one in issue and stated that this was a more modern machine than the one he was working with. The denial by the Plaintiff is corroborated by the inconsistency in DW1's evidence. DW1 stated that the machine displayed before the Court had been procured in November 2013 and was installed in 2014. He also stated that the machine that injured the Plaintiff had been in operation for about two years. This would mean that the machine was installed in 2011. I am unable to believe that the machine procured in November 2013 and installed in 2014 was the one that injured the Plaintiff on 14th October 2013.

[15] The defence attempted during re-examination of DW1 to undo this inconsistency by alleging that the machine in the video had first been installed on trial and it was only purchased after passing the trial stage. I am, still, unable to believe this defence evidence. The inconsistent defence evidence on the matter is incapable of rebutting the Plaintiff's assertive description of the nature of the machine he was working with. I am further fortified in this finding by the fact that DW1 clearly told the Court that the video displayed before the Court was made routinely and for marketing purposes. It thus had no connection with the incident herein in issue and cannot be used to negate the Plaintiff's evidence.

[16] As such, I am satisfied on a balance of probabilities that the Defendant breached their duty to provide a safe working environment to the Plaintiff thereby leading to the injuries sustained by him. The Defendant is, therefore, liable in negligence. It thus becomes inconsequential to consider the plea of the Plaintiff based on the principle of res ipsa loquitor. The first issue is answered in the affirmative.

Issue 2: What remedies are available to the parties?

[17] The Plaintiff acknowledged that he was paid his terminal benefits calculated at UGX 997,406/= and a sum of UGX 8,280,000/= as statutory compensation after deduction of medical expenses amounting to UGX 9,927,500/=. The Plaintiff thus brought this suit for recovery of general damages, exemplary/punitive damages, interest and costs of the suit based on negligence.

[18] Regarding the claim for general damages, Counsel for the Plaintiff proposed a sum of UGX 250,000,000/= for the unbearable bodily pain suffered by the Plaintiff as a result of torn muscles, psychological torture, permanent mental trauma and anguish, and reduction in capacity to earn a living. The law on general damages is that the damages constitute the natural and probable consequence of the wrong complained of. The damages are awarded at the discretion of the court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: *Hadley v Baxendale (1894) 9 Exch 341; Kibimba Rice Ltd v Umar Salim, SC Civil Appeal No. 17 of 1992* and *Robert Cuossens v Attorney General (SCCA No. 8 of 1999) 2000 UGSC 2 (2 March 2000)*. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial Bank v Kigozi [2002] 1 EA 305*. Under the law, general damages are implied in every breach of

contract and every infringement of a given right. In a personal injuries claim, general damages will include anticipated future loss as well as damages for pain and suffering, inconvenience and loss of amenity.

[19] In the present case, the Plaintiff has shown that he was 21 years at the time of the accident and 26 years at the time the case was filed in Court. He was a young man with hope for the future which was dashed by the accident. He stated that he is a right handed person and the injury makes him unable to execute any work and make ends meet; and the defendant company, indeed, declared him unable to do any meaningful work and he was accordingly terminated from employment on medical grounds. The Plaintiff also stated that he underwent intense pain and suffering. I take notice of the fact that the Defendant diligently took some mitigating measures to lessen the Plaintiff's misery. These included prompt payment of his terminal benefits and statutory compensation, which also covered medical expenses; acquisition for him of an artificial arm, if not for anything, for at least cosmetic purpose; giving him an offer of employment in his circumstances, although he turned it down for his personal reasons.

[20] Taking all the above factors into consideration, I am satisfied that the Plaintiff is entitled to compensation by way of general damages although not to the extent suggested by his advocate. On the facts and circumstances of the present case, I find a sum of UGX 100,000,000/= appropriate compensation by way of general damages to the Plaintiff. I award the same accordingly.

[21] The Plaintiff also claimed for punitive/ exemplary damages. According to decided cases, there are only three categories of cases in which exemplary damages are awarded namely; where there has been oppressive, arbitrary, or unconstitutional action by the servants of government; where the defendant's conduct has been calculated by him to make a profit which may well exceed

the compensation payable by the plaintiff; or where some law for the time being in force authorizes the award of exemplary damages. There are also three matters that must be borne in mind before making an award of exemplary damages, namely; the plaintiff cannot recover exemplary damages unless he or she is a victim of punishable behaviour; the power to award exemplary damages should be used with restraint; and the means of the parties are material in assessment of exemplary damages. See: *Rookes v Barnard [1946] ALLER 367 at 410, 411* and *Fredrick J.K. Zaabwe v Orient Bank & Others [2007] UGSC 21*.

[22] On the case before me, I have not found any circumstances warranting any consideration for award of exemplary or punitive damages. As I have indicated above, the Defendant undertook a range of mitigation measures. This is sufficient evidence of absence of impunity, bad faith, arbitrariness or such other gross conduct on their part. I therefore find no justification for considering any award of exemplary damages in the circumstances.

[23] On interest, the discretion of court regarding award of interest is provided for under Section 26(2) of the Civil Procedure Act. The basis of an award of interest is that the defendant has kept the plaintiff out of his money and the defendant has had the use of it himself and ought to compensate the plaintiff accordingly. See: *Premchandra Shenoi and Anor v Maximov Oleg Petrovich SCCA No. 9 of 2003* and *Harbutt's 'placticine' Ltd v Wayne tank & pump Co. Ltd [1970] QB 447*. In determining a just and reasonable rate of interest, court takes into account the ever rising inflation and drastic depreciation of the currency. A plaintiff is entitled to such rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when

it falls due. See: *Kinyera v the Management committee of Laroo Building Primary School HCCS 099/2013*.

[24] In this case, the Plaintiff prayed for interest on all the sums awarded at a rate of 20%. I award interest on the general damages at the rate of 10% p.a. from the date of judgement till payment in full. The Plaintiff is also entitled to the costs of the suit in line with the provision under Section 27 of the Civil Procedure Act and the same are awarded to him.

[25] In the result, judgment is entered for the Plaintiff against the Defendant for payment of;

a) UGX 100,000,000/= (Uganda Shillings One Hundred Million only) as general damages.

b) Interest on (a) above at the rate of 10% per annum from the date of judgment until full payment.

c) The taxed costs of the suit.

It is so ordered.

Dated, signed and delivered by email this 11th day of April, 2024.

Boniface Wamala
JUDGE